



IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

CLAIM NO 2005 HCV 00171

BETWEEN MAITLAND GREGORY CLAIMANT
AND THE ATTORNEY GENERAL DEFENDANT

AND

CLAIM NO. 2005 HCV 00172

BETWEEN KEMISHA GREGORY CLAIMANT
AND THE ATTORNEY GENERAL DEFENDANT

AND

CLAIM NO. 2005 HCV 00173

BETWEEN ANTHONY GREGORY CLAIMANT
AND THE ATTORNEY GENERAL DEFENDANT

Mr. Debayo Adedipe for the Claimant

Miss Marlene Chisholm and Miss Tova Hamilton instructed by the Director of
State Proceedings for the Defendant

Heard: November 23, 24, 25, & December 18, 2009 & September 28, 2011

Actions consolidated by virtue of an Order of the Master

made November 3, 2005

Assault-Vicarious Liability- Damages

THOMPSON-JAMES, J

Introduction

These consolidated actions are brought by Maitland Gregory, Kemisha Gregory and Anthony Gregory who are siblings. On August 21, 2004 whilst travelling along Williams Avenue, May Pen, Clarendon in a motor car driven by their brother Henroy Gregory, the three Claimants suffered injuries in a shooting incident involving the police.

Arising from this incident they seek damages against the Attorney General including exemplary damages.

On the Defendant's side a case of self-defence, policemen who alleged that a vehicle was driving dangerously. They sought to intercept the vehicle and were fired on by the occupants of the vehicle and had returned the fire resulting in the injuries to the three siblings.

The Claim

The claims filed by the three (3) Claimants are similar in nature, that the Claimants claim against the Attorney General of Jamaica that on August 21, 2004 in the parish of Clarendon members of the Constabulary Force to wit: Detective Constable Everton Young, Cpl. Donovan Grant, Constable Barrington Gordon, Constable Benjamin Leach, Detective Constable Wayne Hunt who were at all material times servants or agents of the crown and acting as such wrongfully, deliberately and or recklessly and or negligently and without reasonable or probable cause opened gunfire at the motor car in which the Claimants were travelling and at the Claimants causing them injuries, damages, loss and expenses.

In acting as they did, the said policemen acted in an arbitrary and unconstitutional, manner with total disregard for the lives or safety of the Claimants.

The Claimants claim damages on the footing of exemplary damages.

The Defence

In essence, the Defendant whilst admitting that the Claimants were shot and injured, denied that Maitland Gregory was shot in the back. It is not admitted that Kemisha was shot in her buttocks and fired on whilst she was on the ground.

The Defendant is not admitting that Anthony Gregory was shot in the back of the legs and shots were fired at him whilst he was on the ground.

The Defendant further states that the Ford Escort was overtaken and blocked by one of the motor cars driven by the policemen whilst the other motor car stopped alongside. Further the policemen observed that the white station wagon and the Ford Escort were driving in a reckless and dangerous manner. A portable blue flashing light was placed on the roof of the lead vehicle. The driver of the two cars disobeyed the police order to pull over and only stopped when their paths were blocked.

The Ford Escort began to reverse and explosions were heard and flashes of light were seen coming from it. The police officers in fear for their lives returned the said fire towards the Ford Escort at which time several persons jumped from the vehicle and ran in different directions. A chrome .38 revolver with three live rounds and 3 spent shells were recovered and the Claimants found nearby suffering from gun shot wounds.

The Claimants' Account

In-brief the Claimant **Maitland Gregory** testifies that along with his brothers Henroy and Anthony, his sister Kemisha and a friend Maragh, he travelled in Henroy's Ford Escort motor car from Manchester to Springfield Clarendon to visit relatives.

On the return journey they stopped in May Pen, a dance was in progress in the vicinity of the bus park. On leaving May Pen, a friend, Guy, offered to guide them from the bus park to the highway.

Proceeding along Williams Avenue their vehicles were overtaken by two cars. Men in the cars whom he later discovered to be members of the Jamaica Constabulary Force opened fire at them. Henroy started to reverse the motor car. It came to a halt against an embankment. He came out of the middle of the back seat of the motor car where he was sitting and started to run in the direction from which they were coming and away from the police. The policemen continued firing at them. He was shot in the back and fell to the ground.

Along with Anthony and Kemisha he was taken to hospital where he underwent surgery and remained there for a week. None of them in the car was armed and no shots were fired from the motor car in which he was travelling.

In **cross-examination** he testifies that he spent close to midnight at Springfield. It was the first time he was visiting relatives in Springfield. They had nothing to drink at the relatives in Springfield.

At Crossroads they were joined by Guy and his girlfriend.

At May Pen they remained outside of the dance and had nothing to drink. On leaving May Pen Kemisha sat in the front of the car and Maragh at the back of the car. He was in the middle back of the car.

Guy was not driving slowly. Henroy was not driving fast he was keeping up with the speed at which Guy was travelling.

The car that overtook the Ford Escort overtook Guy's car. The first time he noticed that the car had overtaken the car that he was in was when he heard "bare shots coming from the car". He heard no horns blaring. He saw no blue flashing light. It was an unmarked car.

Shots were fired only at the car that he was in. He got shot when he came out of the vehicle. He got the shot to his back. He was trying to come out of the car with his back to the windshield. When he came to a stop the police were still firing, no shots were fired from the Ford Escort.

The police did not start firing after shots were fired from the Ford Escort. The policemen were not wearing plain clothes with vest marked police. It was the Saturday morning that he realized that they were policemen.

The police found no gun beside him.

Kemisha Gregory testimony is in essence similar to that of her brothers Maitland and Anthony.

In brief she testifies that at the time she was 15 years old. She travelled with her siblings and Maragh to Springfield. On their way back home they stopped at a dance in May Pen. On leaving the dance they were piloted by Guy. Proceeding along Williams Avenue, May Pen, the car in which they were travelling was

overtaken by two motor cars which blocked their path. Men in the said motor cars fired at the car. Her brother, Henroy who was the driver of their car started to reverse in a bid to escape the gunfire but came to a halt against the embankment.

She came out of the front passenger seat where she was seated and ran in the direction from which they were coming and away from the fire. The policemen continued firing at them. She was shot in the buttocks. She fell to the ground and even as she lay on the ground shots were being fired in her direction.

In **cross-examination** she testifies that at her relatives' home she had nothing to drink. Guy's car was not travelling fast after they left May Pen. The cars were about 15 – 20 feet apart.

The shots came from behind her car and no one shouted. She can't recall anyone shouting "police". Police did not tell them to pull over. She did not observe flashing lights on any of the cars. Shots were only fired at the car that she was in.

She denied that Guy's car was driving fast that night and states that it is not true that the police fired after shots were fired from the Ford Escort. No shots were fired from the Ford Escort that night.

She fell to the ground facing the back of the car that she was in. Maragh was not shot.

Anthony Gregory's evidence-in-chief is along the same lines as that of his siblings Maitland and Kemisha. The incident took place whilst he was visiting from the United States of America.

At the time of the shooting he was seated in the back seat of the Ford Escort and was shot in his head whilst still in the car. As his siblings did, he ran away from the direction of the policemen who were firing at him, back to the direction from which he was coming. The policemen continued firing. He was shot in the leg and fell to the ground. Whilst on the ground shots were still being fired in his direction. He was later taken to the hospital.

In **cross-examination** he testifies that he had been living in Florida since 1996. They arrived in Springfield about 11:30p.m. to 12 midnight. They took a new route. He cannot recall if any of them had anything to drink at the bar at Crossroads. That is after he left his Springfield relatives.

He had nothing to drink at the dance in May Pen. He cannot recall if the others had. It took about 20 minutes from the dance to Williams Avenue. Henroy was driving at about 45mph. He observed no vehicle travelling in the opposite direction. He heard no horns sounding behind him and saw no flashing light. He was not aware of the police or any car speeding behind him.

The vehicle that he was travelling in was fired at. The vehicle that Guy was travelling in was not. At that time he was not aware that it was the police who were firing the shots.

The Ford Escort went back about 5 – 6 feet. It did not really reverse. When it came to a stop they were still firing at it.

Men were not wearing vest marked police that night.

He was shot at three times that night. The police shot him when they found him. He was charged with illegal possession of firearm and ammunition as well as shooting with intent. He was acquitted.

The Defendant's Account

Cons. Benjamin Leach testifies that he was on duty at the May Pen Police Station. Cpl. Grant briefed his team which included Constable Wayne Hunt, Detective Constable Everton Young and Constable Barrington Gordon. He was dressed in plain clothes and wearing an unmarked police bullet proof vest and a ballistic helmet.

They left the May Pen Police Station at about 1:15am on assignment, driving two unmarked service vehicles driven by Detective Young and Cpl. Grant.

On completion of this assignment they were travelling along Brooks Avenue May Pen. A blue Ford Escort and a white Toyota Corolla motor car over took both service vehicles driving in a dangerous manner.

The first service vehicle driven by Det. Young turned on its blue flashing light and gave chase. He heard the police in the other service vehicle shouting for the two cars to stop. The occupants disobeyed the order and proceeded unto Williams Avenue where Det. Young used his vehicle to block the path of the two vehicles.

The vehicle in which he was travelling came alongside the blue Ford Escort. They immediately disembarked and ordered the occupants to come out of the vehicle however the Ford Escort continued to reverse.

He heard loud explosions like gunshots coming from the direction of the vehicle. He took cover as he was in fear for his life. He did not return the fire as he did not have a clear view.

After the shooting subsided he approached the Ford Escort. He saw one man hiding behind the passenger seat. A man and a woman were lying on the ground behind the Ford Escort with what appeared to be gun shot injuries

He noticed a chrome revolver with a rubber handle behind the Ford Escort. The revolver was retrieved by Cons. Gordon who handed it to Cpl. Grant. He left with Cpl. Grant with the injured persons to the hospital.

In **cross-examination** he testifies that at the time of the incident he was the most junior officer there that night, a very experienced policeman of five years service. He attributes the fact that he did not fire to his experience. Once he started taking evasive actions he ended up behind a police who was obstructing his view. He was seated on the right-hand side of the back seat of the car.

The service vehicles were not hit by the shots, neither were the police hit by the shots.

Although this was not expressed in his evidence in chief, he saw muzzle flashes and heard explosions coming from the direction of the car.

The distance between the car that he was in and the car that he was giving chase was about 2 car lengths. Cons. Young was chasing at a fast speed. The chase lasted for about 2 minutes which he considered short. He was about 15 feet from the Ford Escort when he heard the explosions. At the time there was a lull in crime in May Pen.

He gave evidence at the trial of the complainants.

Sgt. Donovan Grant testifies that he had briefed a party of police for an assignment. He was dressed in blue denim with police marked boldly in white letters. They left in two marked vehicles. After completing the assignment they were travelling along Brooks Avenue May Pen. He saw a blue Ford Escort with five persons and a white Toyota motor car with two sped pass the two service vehicles, driving in a dangerous manner.

He observed that the blue flasher on the vehicle that Cons. Young was driving came on and Cons Young's vehicle began to chase the two vehicles. He proceeded to chase as well, blaring the horn but the vehicles did not stop. The vehicles proceeded onto Williams Avenue where Det. Young overtook the two vehicles and used the service vehicle to block the path of the other two vehicles.

When he alighted from his vehicle he noticed the Ford Escort began to reverse at a fast speed and he heard explosions sounding like gunshots coming from its direction and flashes of light. He then took cover and returned the fire. The car then stopped and men ran from the vehicle. He fired because he was in fear of his life and the lives of his colleagues.

After the shooting subsided he saw one man hiding behind the passenger seat of the Ford Escort, a male and female lying on the ground crying for pain. He saw Cons. Gordon take up a revolver with three live rounds and three spent shells from the male who was lying beside the car and handed it to him saying "see di bwoy dem gun yah."

Constables Gordon and Young went into a nearby lane where another man was found and the injured persons were taken to the hospital.

In **cross-examination** he testifies that he was the driver of the second motor vehicle and when he commenced the chase he was 2-3 vehicle-lengths from the car at the back. When the vehicles came to a halt he stopped a little ahead of it, just a little.

He heard explosions sounding like gunshots coming from the direction of the escort and saw flashes of light. Neither the police vehicles nor the occupants were shot.

He saw a Constable removed the firearm and carried it to him. This was retrieved from behind the Ford Escort close to an injured male.

It was a dark night but he had the use of a flashlight. There were street lights at one section. It was not totally clear but you can see. He could not see well. The visibility was that poor. He fired before he saw the men ran from the vehicle. He fired no more shots after they ran from the vehicle. He took responsibility for firing about five shots.

So engaged was he that he did not see a young female run out of the front left car door.

He has been in the force for 13 years. No police hurt, no vehicle destroyed. His response to the flashes of light was to fire five shots. The fire came in his direction. He returned it. He felt comfortable firing five shots in the presence of poor visibility.

Det. Cpl. Wayne Hunt testifies that he went on assignment dressed in plain clothes and in a marked police vest along with three other police officers in two service vehicles.

After completing the assignment they were travelling along Brooks Avenue when two cars overtook both service vehicles driving in a dangerous manner. He placed the blue flasher light on top of the service vehicle and Cpl. Young gave chase. They caught up with both vehicles along Brooks Avenue and shouted to the drivers of both vehicles "police pull over to your left and stop". They pursued and caught up with them along Williams Avenue. Cons. Young overtook them and blocked their path. They stopped when Cons. Young stopped the vehicle. He alighted from the vehicle and shouted police "come out of the car with your hands up".

The other service vehicle drove up and parked beside the blue Ford Escort.

Shortly after the blue Ford Escort started to reverse speedily, he heard loud explosions sounding like gunshots and saw flashes of light coming from the direction of the Ford Escort.

He was in fear of his life. He took cover and did not return the fire as he did not have a clear view.

After the shooting subsided he saw a man behind the passenger seat and a female lying on the ground with what appeared to be blood on them. Constable Grant had a revolver. He later rushed into a lane and saw a man lying in a pool of blood and a man lying on his back in a lane.

In **cross-examination** he testifies that he did not have a clear view because police officers were between him and the parties firing at them.

The only persons who were shot that night were the three Claimants.

He cannot recall if there were property damages from the gun shots.

Det. Cpl. Everton Lloyd Young testifies that he was dressed in plain clothes and a marked police vest. He was on duty with other policemen. They were in two marked service vehicle. Whilst travelling along Brooks Avenue he observed two cars overtaking them and driving dangerously. Cons. Hunt placed the blue flasher light on top of the service vehicle and he gave chase. The two cars turned on Williams Avenue. He overtook the vehicles and used the service vehicle to block the path of both vehicles.

He stopped the vehicles and alighted and shouted out "police come out of the car". The other service vehicle drove alongside the Ford Escort. He noticed the Ford Escort started to reverse speedily. He heard explosions sounding like gunshots and saw flashes of light coming from the direction of the Ford Escort.

He was in fear of his life. He took cover and returned the fire. An occupant of the Ford Escort jumped out and ran.

He later saw a male and a female lying on the ground behind the escort suffering from what appeared to be gunshot injuries and Cpl. Grant with a chrome revolver in his hand. He also saw another man lying on his back in a lane. The injured were taken to the May Pen Hospital.

In **cross-examination** he testifies that he fired shots, he did not do so before anyone came out of the car. Shots were fired from the Ford Escort. None of the police officers were hit. He was not hit and none of the police vehicles were hit.

The Claimants' Submission

After outlining the nature of the proceedings, summarizing the individual claims, the defence, as well as analyzing the evidence, learned counsel for the Claimants Mr. Debayo Adedipe submits inter alia that it is significant that none of the police officers actually alleges seeing anyone with a gun in the car in spite of the relatively small distance between the Ford Escort and the police car alongside it. Det. Cpl. Hunt's evidence approximates a service car two car lengths away from the Ford Escort.

Further, none of the police officers asserts that gun shots were fired at them from the Ford Escort at all. They all spoke of hearing loud explosions sounding like gun shots and seeing flashes of fire.

Equally significant, he asserts, are the admissions of the police officers that none of them was hit by gunshots neither were their cars hit and only the Claimants were shot. In cross-examination of the Claimants the Crown directly let in evidence that the Claimants had been charged for illegal possession of a firearm and other Gun Court offences arising from this incident. All three of them were acquitted at the trial. Maragh, another passenger, was also acquitted at the trial. Henroy the driver of the Ford Escort was acquitted on appeal.

The Crown he therefore asserts thereby established that these police officers who shot these three passengers of the Ford Escort gave evidence against them

but were unable to secure convictions against them or to maintain a conviction against any of the passengers of the Ford Escort.

In his assessment of the evidence the learned counsel submits that the police claim to have been attracted to the Corolla and the Ford Escort because they were driving in a dangerous manner. No evidence was given of the actual manner in which the cars were being driven. That would have been necessary to determine whether a chase was justified in the first instance. On a charge of dangerous driving the police would have had to prove that the manner of driving was in fact dangerous, so specific evidence would have to be given of the manner of driving. **R v Henroy Jackson 10 JLR page 210**

He argues that it could not be the speed at which the cars were driven that attracted the police. The Claimants' evidence is that they were not driving fast. The police's evidence is that the chase and the shooting were all over in 2 ½ minutes. So during this period the police chased them, overtook them, blocked and shot them. Had they been driving at a fast rate of speed the Claimants could not have been caught up with, overtaken and all else happened in such a short period of time.

It is clear that whatever the reason for the police blocking the path of these youngsters and shooting them, they acted in a reckless and intemperate manner. Though at close range they never saw any of the occupants of the cars with guns, never saw any of them firing guns, they recklessly opened fire on the occupants of the car because at best they heard explosions and saw flashes of light.

There was no credible evidence of any suspicious activity on the part of the occupants of the cars that would have warranted the police chasing them and intercepting them in a dark area in the first place.

He proposes that the true test of the recklessness of the police officer is this: If the occupants of the cars had been licensed firearm holders and they had been intercepted and blocked in that manner in a dark area in May Pen in that fashion and gunshots fired at them they would most certainly have been justified in returning the fire. After all, the police cars were unmarked and they would have been entitled to defend themselves. The police acted with disregard for the safety of the passengers of the car and for their own safety.

The Defendants' Submission

In essence, the Defendant submits that the principal issues in this case are as follows:

- (i) What cause(s) of action, if any, are disclosed in the respective Particulars of Claim?
- (ii) Whether the police acted maliciously or without reasonable or probable cause in the circumstances?
- (iii) Whether the police were acting in self-defence?
- (iv) Whether the Defendant is liable in damages and in what amount?

In relation to the cause of action it is submitted that the pleadings are not specific as to what cause(s) of action the Claimants are bringing their claims under.

Citing **Letang vs Cooper 1964 2AER 929 at page 934**: a cause of action is

simply a factual situation the existence of which entitles one person to obtain from the court a remedy against another person, (per Lord Diplock).

The definition of the term assault and battery is found in **Fagan vs Metropolitan Police Commissioner 1968 3AER 442 page 445** as propounded by James J was cited as useful along with the classic definition as given by Alderson B. In **Blyth vs Birmingham Water Works Co. (1843 – 66) AER 479 – 480**. Reference was also made to Lord Denning's MR explanation of the relationship between negligence and assault.

Further the Claimants statement of claim as indicated in the Particulars of Claim was outlined as well as Rule 8.9(1) of the CPR 2002 and in this respect it is submitted that the Claimant has not pleaded the independent tort of negligence. Having not pleaded the particulars of negligence, the Claimants have failed to establish the cause of action in negligence.

By contrast, in order to maintain an action for assault and battery the Claimants need only set out the facts which showed the conduct complained of was intentional. By alleging that the members of the police force deliberately opened fire at the motor car in which the Claimants were travelling falls squarely within the description of the tort of assault and battery therefore the claim before the court is a claim for assault and battery.

After outlining what the Defendant considered to be the unchallenged and uncontroverted facts, learned counsels for the Defendant submit on the issue of law that by section 33 of the Constabulary Force Act, the Claimants must prove that the police discharged their firearms either maliciously or without reasonable

cause referring to McKain J proposition in **Joseph Andrews vs Attorney**

General of Jamaica 1981 18 JLR 434 at page 438:

“The duty of the police is, among other things, the apprehension of wrongdoers in the society with a view to bringing them to justice.”

The statement by the learned judge, it is submitted, follows from section 13 of the Constabulary Force Act.

In relation to whether the police had reasonable or probable cause to block the car in which the Claimants were travelling along Williams Avenue, it is submitted that the issue turns on whether the driver of the Ford Escort and the Toyota corolla were driving in a dangerous or reckless manner and whether they disobeyed the police lawful order to stop that night.

Further under the Road Traffic Act, it is an offence to drive dangerously and recklessly. Consequently the officers were obligated to stop the vehicle. The police is also empowered under section 19 of the Constabulary Force Act to stop and search vehicles.

To buttress this argument the learned counsels sought to place reliance on certain aspects of the evidence in relation to the time the Claimants and friends left their places of abode, the length of time it took to travel from Manchester to Clarendon, the time stopped at the dance, and the Claimants ability to recall having only one drink. Further it is submitted that it is not reasonable to believe that having started the journey from 9:00 the night before and the gaps between the time it took them from Manchester to reach Springfield which suggests that

there could have been other stops. It seems to me that this is mere speculation on the part of the learned counsels.

It is argued that the Claimants cannot conveniently recall the circumstances surrounding drinks had that night and having not called either Guy or Henroy the Claimants have not displaced the evidence of the officers of the reckless and dangerous driving that night.

Further Henroy and Guy were not called by the Claimants to refute the police version of the events of putting on the blue flasher light and the command to stop which they disobeyed. The conclusion in this respect is that the drivers of the Escort and the Corolla were not lawfully driving the vehicles that night and the police were justified in the pursuit of these vehicles with a view to apprehend them. The drivers having not complied with the police orders to stop, the police were justified in blocking their path.

In relation to whether the police acted in self-defence that night, it is submitted that the shooting by Cpl. Young and Grant was justifiable on the ground of self defence and to apprehend the wrongdoer in the Escort. In this respect reliance is placed on the words of McKain J, in **Joseph Andrews vs Attorney General**:

“A policeman is empowered to carry firearms and to use it when necessary both in the apprehension of a suspected wrongdoer and in protecting himself from serious attack from any quarter.”

Referring to the Criminal case of **Beckford vs R 1987 3AER 425 P.C at page 432** which it is submitted is concerned with respect to a plea of self-defence. An equal approach, it is argued, is to be taken in civil trials. **Beckford's** case states:

The test to be applied for self-defence is that a person may use such force as is reasonable in the circumstances as he honestly believes them to be in the defence of himself or another”.

Applying these principles it is submitted that the issue of whether the policemen were defending themselves or each other is to be tested against the surrounding circumstances of the case.

After outlining the features of the evidence that make such a belief more probable than not that is to say the policemen had genuine/honest belief that they were being attacked by persons in the Ford Escort, it is submitted that this tends to prove that Cpl. Young did not discharge his firearm when he was overtaking both cars and when he blocked the Toyota Corolla and equally that Cpl. Grant did not open fire at Guy's car at the time he stopped.

Further on the analysis put forward Cpl. Grant did not open fire when his car passed the Ford Escort and he and the occupants alighted from the service vehicle when it stopped.

Continuing to analyze the evidence the question was posed: Why would the officers at that moment fire only at the Ford Escort if not for the fact that someone in it first fired at the police?

The learned counsels argued that the law is quite clear as to the lawful use of force in these circumstances. In the case of **George Finn vs The Attorney**

General 1981 18JLR 120 Wolfe J made it quite clear that:

It is settled law that an officer may repel force by force where his authority to arrest or imprison is resisted, and will be justified in so doing even if death should be the consequence, yet he ought not to proceed to extremes upon every slight interruption not without reasonable necessity.”

It is submitted that contrary to the Claimants' view that the police opened fire and Henroy started to reverse in a bid to escape, the evidence tends to favour the Defendant's version as the Claimants by their evidence saw the unmarked vehicle and later learnt it was the police. They did not know it was the police when they were blocked by the unmarked vehicle. Further the police came out with guns in hands.

It is submitted that the possibility is that they were in fear of their lives and Henroy started to reverse speedily. One of the Claimants was armed with gun and discharged the firearm. To the shock of their lives they were greeted with return of fire, resulting in injuries. This possibility referred to here seems to me to be again pure speculation.

In relation to the absence of injury to the servicemen as well as to the service vehicle it is submitted that (although) the evidence is that the flashes of light did not come from any direction (side?) The evidence however is that it points to the flashes of light coming from the direction of the left of the Ford Escort, since the Claimants who were injured, all escaped from the left passenger door, in other words the concentration of the firing was directed to the left of the Ford Escort. I am afraid that I am unsure as to the source of this evidence.

Anthony's evidence, it is proposed, is that the back windows were sealed and the front windows were down. It was concluded that there was nothing to prevent someone in the Ford Escort from going through the left window. Further if the Ford Escort was a distance from the police neither the service vehicles nor the police would necessarily be hit. The evidence from the Defendant's witness is

that the vehicles were in close proximity, two car lengths. I am unable to appreciate this reasoning. Again I fear speculation on the part of the defence.

Reference is made to a possibility of being in fear, if the Ford Escort was at a distance. Again I have to point out inference can only be drawn from proven facts irrespective of the standard of proof.

It is submitted that the true test is whether the police in fact heard loud explosions coming from the Ford Escort. At that point, it was argued, it would not matter whether they had a clear view of the occupants in the Ford Escort. The lighting was poor. The duty of the police at the moment is to apprehend the wrongdoer and most of all to protect their lives.

The court was asked to bear in mind in deciding whether the police officers were acting in self defence, whether the force applied was reasonable in the circumstances. In **Finn** it was submitted, the question was asked:

What degree of force then was the officers entitled to use in apprehending the plaintiff "a mere" escaping felon? The age old test must apply, "to wit reasonable force."

In this respect it was submitted that the Claimants were not mere escaping felons as the officers' evidence is that they heard loud explosions and saw flashes of light as the Claimants tried to escape. It is contended that the officers had an honest belief that they were fleeing felons.

The police, it is submitted, used reasonable force in the circumstances as the injuries suffered by the Claimants happened when they tried to escape. The shots were not fired at them as they lay on the ground. The amount of gunshots

received proves that the police did not intend to kill the Claimants but rather to apprehend them and bring them to justice.

From the evidence of Maitland and Kemisha each received one shot to the back and the buttocks respectively. Anthony was shot whilst in the car, evidently he was running away. He received one shot to the back of his calf which exited to the front.

Further it was submitted that in **Martin Keane vs Attorney General (1996) 33 JLR 339** it was held that where there has been a committal by a Magistrate and the Director of Public Prosecution has preferred an indictment which goes to trial before a jury there can be no want of reasonable and probable cause. On this authority the Claimants having been subjected to a full criminal trial it is sufficient to prove that the police had reasonable and probable cause to act in the manner they did.

The inconsistencies and discrepancies on the evidence

On Maitland Gregory's Evidence

In his evidence-in-chief he testified that as they proceeded along Williams Avenue they were overtaken by two motor cars. In cross-examination he testified that he does not know Williams Avenue, May Pen. He is not sure where he was injured.

In his evidence-in-chief he testified that they were overtaken by two cars. In cross-examination he testified that he was overtaken by one car.

He testified in cross-examination that Kemisha came out on the left side. Shots were still firing. He later testified that he did not see when Kemisha got out of the car.

On Kemisha Gregory's Evidence

In her evidence-in-chief she testified that a car overtook the vehicle in which she was travelling that night. She then went on to testify that two cars overtook the vehicle that she was in.

In cross-examination she testified that she did not exit the car first. Henry did. She testified that he came out of the car when shots were being fired. She then testified that she did not see when the others came out of the car. Her evidence is, "I did not see when anybody came out of the car."

On Anthony Gregory's Evidence

Initially in cross-examination he testified that it took him two hours from Green Pond to Springfield, he then testified that it took one-and-a-half hours from Green Pond to Springfield.

In his evidence in chief as stated, by the other witnesses he testified that two cars overtook the car that he was in. In cross-examination his testimony refers to one car; he did not know about a second car.

I do not consider these inconsistencies fundamental.

On Cons. Benjamin Leach's testimony

In his evidence-in-chief Cons. Leach testified that the vehicle in which he was travelling came alongside the blue Ford Escort. In cross-examination he testified that when he came out of the vehicle he was not behind the car that he was in.

He then went on to say he was to the rear of the car that he was in as in behind it. He still maintained that he was behind the car.

In his evidence-in-chief he testified that he heard loud explosions like gunshot coming from the direction of the vehicle. In cross-examination he testified that persons from within the vehicle fired at the police and agreed with learned counsel Mr. Adedipe that this was not in his witness statement. I find this inconsistency material.

On Sgt. Donovan Grant's Testimony

In cross-examination he testified that in his witness statement (evidence-in-chief) he said "they fired at us" when this evidence in chief was shown to him he admitted that this statement was not in it. I consider this material.

On Det. Cpl. Wayne Hunt's Testimony

In cross-examination he testified that the persons were firing at them when asked if he had said this in examination in chief he too admitted that he did not say so.

In cross-examination he testified that he was shot at, his evidence in chief is that he heard loud explosions sounding like gunshots and saw flashes of light coming from the direction of the Ford Escort.

In cross examination he testified that he could see what was happening well. He observed the Ford Escort well yet he did not notice a young girl in the front seat.

His testimony is that he did not realize that Det. Cpl. Young fired shots that night. Det. Cpl. Young was about 5 feet from him. Det. Cpl. Young was closer to the escort than he was. He could see him. Det. Cpl. Young was between him and the escort. He could see the escort. He then went on to say "In spite of this I

could not say if he was very close to the Escort at that time.” Det. Young was about two cars lengths away from the escort. That is close distance.

In his cross-examination he testified that there were persons firing at the police. When asked if this was stated in his evidence-in-chief he admitted that he did not so state but it did happen. I consider this material.

I find that I cannot place reliance on the policemen’s evidence that the occupants of the Ford Escort fired at them.

Discrepancies on the Evidence

On the Claimants’ Evidence

Maitland Gregory’s evidence is that one car overtook the vehicle that they were in, not two. All the other Claimants referred to two.

All the other Claimants testified that the Ford Escort reversed and was stopped by an embankment. Anthony Gregory’s testimony is that the Ford Escort rolled back 5-6 feet not what he would call a reverse. I do not consider these discrepancies material.

On the Defendants’ evidence

Cpl. Wayne Hunt’s testimony is that Cpl. Young shouted, “police pull over to your left and stop.” Det. Cpl. Young’s evidence is that he shouted, “police come out of the car.” I do not find this material.

Cons. Benjamin Leach testified that he travelled in the second vehicle. Sgt. Donovan Grant was the driver of this vehicle. His evidence among others in this respect is that the car that he was in did not physically pass the Ford Escort

motor car. When the Ford Escort came to a halt the car that he was in was alongside it.

Sgt. Grant's testimony is that when the vehicle that is the back car came to a halt my vehicle stopped a little ahead of it. Cpl. Hunt's testimony is that the vehicle driven by Cons. Young parked beside the Escort.

Cpl. Donovan Grant testified that Cpl. Gordon took up a chrome revolver with three live rounds and three spent shells from beside the male lying behind the car. Constable Leach's testimony is that he noticed a chrome revolver with a rubber band behind the Ford Escort. He makes no mention of spent shells. Detectives Cpl. Hunt and Young saw a male and a female lying on the ground behind the Escort but they made no mention of spent shells.

In the face of these discrepancies again I find that I cannot place reliance on the evidence of these policemen in relation to the recovery of the firearm and spent shells, particularly since these are policemen whose ability to detect, observe and recall ought to be above that of the average untrained person.

The areas that I find that are not in issue

The following facts were either proved or admitted:

- (1) The Claimants were shot and injured by policemen
- (2) There was no damage to the policemen, their service vehicles or the Toyota Corolla.
- (3) The Claimants together with Henroy, Gregory and Robert Maragh were charged with Illegal Possession of Firearm and ammunition and Shooting with Intent.

(4) At the trial all save Henroy Gregory was acquitted.

(5) Henroy Gregory was acquitted on appeal

I find that the issues to be determined are:

(1) Whether the driver of the Ford Escort had committed the offence of dangerous driving.

(2) Did the occupants or any of the occupants of the Ford Escort fire at the policemen that night?

(3) Whether the police acted maliciously or without reasonable or probable cause.

The Findings of Fact

It is not in issue that the siblings travelled from Manchester to Clarendon and on their return journey they stopped in May Pen. Guy, who had joined them on this return journey, was escorting them to the highway when on reaching Williams Avenue they came in contact with a group of policemen. There was no damage to the policemen or police vehicles that night.

It is on reaching Brooks Avenue that I find that the Claimants and the Defendants story became diametrically opposed.

I have listened carefully to the evidence on both sides. I have observed the demeanour of the witnesses. I have taken into account the submissions made by the attorneys-at-law.

I find as a fact that the driver of the Ford Escort was not driving fast that night. I accept Maitland Gregory's testimony when he said that Guy was not going

slowly, he was not driving fast and Henroy was keeping up with Guy who was not going fast.

I accept Maitland Gregory's evidence when he testified that he saw no flashing light and he did not hear any horns blaring.

I find as a fact and I accept his evidence when he testified that he received a gunshot to this back. This is supported by the Medical report of Dr. R. Collins dated March 21, 2006 which states that the patient (had) a gunshot wound to the right mid-back.

I find as a fact and accept Maitland Gregory's evidence supported by that of Kemisha Gregory who states that even as they lay on the ground shots were still being fired in their direction. Anthony Gregory's evidence which I accept is that after the Ford Escort came to a stop shots were still being fired.

I accept Anthony Gregory's testimony when he said that he was shot at three times whilst he was in the car and that he got injured to the head, at the top of the forehead. When he ran he was shot in the leg and fell to the ground. The medical report of Dr. Randall Collins dated October 16, 2008 states that Anthony Gregory had gunshot wounds to the left front scalp and the left thigh and leg. I accept Anthony Gregory's evidence when he testified that even after the police found him they shot him.

I find as a fact that when the policemen fired that night they did not have a clear view. It is Constable Leach's evidence that at the time of the incident he was a very experienced police of five years. I appreciate that he explained that when he took evasive action, he ended up behind a colleague who was obstructing his

view. However, Sgt. Donovan Grant's evidence is that it was dark-night but he had the use of a flashlight. There were street lights at one section. It was not totally clear but you can see. He did not see well. The visibility was that poor yet he fired five shots. Further, I cannot see how the use of a flashlight could have assisted him as there may well have been difficulties in his handling of a flashlight along with the use of a firearm that night.

Further, his evidence is that he was so engaged that he did not see a young female ran from the front left door of the car. I consider this bit of evidence telling and find that the visibility that night was not good. Further, the policemen who fired did so without regard for the passengers in the Ford Escort.

I find it difficult to appreciate a chase of a distance of two car-lengths, a chase which lasted two minutes; considered to be a short distance by the Defendant's witnesses. Det. Sgt. Grant's evidence is that he was the driver of the second motor vehicle and when the chase commenced he was 2 -3 vehicle-length from the car at the back. I am afraid that I am not convinced that there was a chase that night.

Det. Sgt. Donovan Grant's evidence is that he saw the white Toyota Corolla and the Ford Escort sped pass them driving in a dangerous manner. It is Cons. Wayne Hunt's testimony as well that both vehicles were driving in a dangerous manner. I find that there is no evidence forthcoming to show that these cars were driving in a manner which was dangerous to the public having regard to all the circumstances of the case, the nature and condition and including the use of

the road and the amount of traffic which is actually at the time or which might reasonably be expected to be on the road (**section 27 Road Traffic Act**).

I have to agree with Mr. Adedipe that specific evidence would have to be given as to the manner of driving to prove dangerous driving and that the manner of driving would be necessary to justify a chase.

It is the evidence from the Defendant's witnesses that men opened fire from the Ford Escort. Cpl. Leach and Sgt. Grant returned the fire. In cross-examination Cpl. Grant testified that he did not fire any shots before anyone came out of the vehicle. I could not find on the evidence that any shots were fired from the Ford Escort or any of the occupants after they started running from the vehicle. In the circumstances what reason then would Cpl. Grant have to fire after the occupants ran from the vehicle? It is significant and I agree with Mr. Adedipe that only the Claimants were shot, none of the officers were shot, none of the vehicles damaged.

I find Sgt. Grant's attitude quite difficult to appreciate. He has been in the force for thirteen years. The fire came in his direction and he returned it. He felt comfortable firing five shots in the face of poor visibility. Detective Young a policeman of ten years experience fired as well. It is noteworthy that Det. Cpl. Hunt did not fire as he did not have a clear view.

I do not find that the Defendant has established on a balance of probability that the Ford Escort and the Toyota corolla were driving in a manner that was dangerous that night.

There may well have been something happening in relation to both vehicles that night but on the evidence before me and on a balance of probability I am not convinced that the policemen had any reasonable suspicion that a crime was being committed or any cause at all to chase the vehicles and open fire on the Ford Escort car occupied by the Claimants.

I have to agree with Mr. Adedipe's submission that there was no credible evidence of any suspicious activity on the part of the occupants of the cars that would have warranted the police officer chasing them and intercepting them in the dark area in the first place.

I appreciate that there are inconsistencies and discrepancies in the evidence on both sides and in this type of case credibility and reliability become relevant issues and that in any trial there are likely to be contradictions and inconsistencies on the facts. I find the Claimants' account more credible and in the main the contradictions not material. However, I find the Defendant's account riddled with inconsistencies and discrepancies which I consider material. The Defendant I find on the evidence has not established that the policemen had any reasons to open fire at the Ford Escort that night. Further they were not acting in self-defence. Even if they were so acting, which I do not find, I have not seen the need, on their own evidence, for Cons. Leach, Sgt. Grant and Det. Young to have fired so many shots that night and the reason for so many shots to have been fired.

Kemesha was shot in the buttocks. Maitland to the right mid-back. It appears to me that at that time they would have been going away from the police fire. Sgt.

Donovan Grant's evidence is that he fired before the men ran from the vehicle. He fired no more shots after they ran. On the Defendant's evidence therefore I cannot then appreciate why Maitland and Kemesha were shot to the back of the body.

On the evidence I could not find that the policemen had an honest, even if mistaken belief, that they were fired at that night.

The Applicable Law

Clerk and Lindsell on Torts 19th Edition page 883:

An assault is an act which causes another person to apprehend the infliction of immediate unlawful force on his person. The defendants' act must also be coupled with the capacity of carrying the intention to commit a battery into effect although in popular language an assault includes a battery a person maybe guilty of an assault without being guilty of a battery.

Gilbert Kodilyne Commonwealth Caribbean Tort Law 4th Edition page 10

Battery is the intentional application of force to another person. Assault is the intentional putting of another person in fear of an immediate battery. ---Although the distinction between assault and battery in the law of Torts is clearly established, it has to be admitted that in the Caribbean and other jurisdictions the courts have tended to blur the distinction and to describe as an assault conduct which in strict law amounts to battery.

Fagan vs Metropolitan Police Commissioner 1968 3AER 442 per James J at page 455

An assault is an act which intentionally or possibly recklessly causes another person to apprehend immediate and unlawful personal violence. Although "assault" is an independent crime and is to be treated as such, for practical purposes today "assault" is generally synonymous with the term "battery", and is a term used to mean the actual intended use of unlawful force to another person without his consent.

George Finn vs Attorney General 1981 18 JLR at page 120 at page 125

What degree of force then was the officer entitled to use in apprehending the plaintiff a 'mere' escaping felon? The age old test must be applied to wit 'reasonable force' ---arms, now at such a stage of perfection that they cannot be employed without danger to life and limb even of distance and innocent persons, must be used with the greatest of care, and the greatest pains must be exercised to avoid the infliction of fatal injuries ---a gun should never be used or used with any specific degree of force if there is any doubt as to its necessity.

Section 13 Constabulary Force Act

The duties of the police under this Act shall be to keep watch by day and by night, to preserve the peace, to detect crime, apprehend or summons before a justice, persons, found committing any offence or whom they may reasonably suspect of having committed any offence or who may be charged with having committed any offence ---

Section 33 of the Constabulary Force Act

Every action to be brought against any constable for any act done by him in the execution of his office, shall be an action on the case as for a tort; and in the declaration it shall be expressly alleged that such an act was done either maliciously or without reasonable or probable cause; and if at the trial of any such action the plaintiff shall fail to prove such allegation he shall be non-suited or a verdict shall be given for the defendant.

Defendant's objection

On November 24, 2009 witness Maitland Gregory testified and was cross-examined, thereafter the witness Kemiesha Gregory testified.

On November 25, 2009 learned counsel for the Defendant Miss Chisholm made an application for the striking out of Maitland Gregory's witness statement.

Stating that he could not read much and this puts into issue whether or not his witness statement is proper pursuant to 29.4(2) of the CPR 2002, having not met the requirement relating to illiteracy.

Mr. Adedipe submits that the witness statement could not be struck out at that stage as the objection is that this Claimant could not read much. Further it was too late for this objection to be made.

I have to agree with Mr. Adedipe as I am unsure as to the reason for making this application after the witness had testified and was cross-examined.

Mr. Gregory's ability to read was not tested in any significant way during cross-examination. That is, no question was put to him directly as to his inability to read and as such his illiteracy was not established on a balance of probability.

Even if Maitland Gregory's witness statement were not compliant with Part 29.4(2) of the CPR then the door would not be closed on him. (**George Bryan vs Grossett Harris CL 2000/B087**) In my view he would probably be granted relief from sanction if such an application were to be made.

The application of the law to the findings of fact

I have found that the Defendant has not established on a balance of probability that the Toyota Corolla and the Ford Escort were operated in a dangerous manner that night. I have also found on the evidence that it has not been established that the policemen had any reasonable suspicion that any crime was being committed or any reason or cause established to give chase and then open fire on the occupants of the Ford Escort. Neither were they acting in self defence. I have also found that the evidence given by the police in relation to the

firearm and ammunition allegedly found that night cannot be relied on. Then clearly the action of the police in relation to the injuries of the Claimants amounts to an assault.

An assault is any act which intentionally or possibly recklessly causes another person to apprehend immediate and unlawful personal violence. The prosecution must prove that it was deliberate on the appellant's part (**Fagan vs Metropolitan Police**).

In this case, the police on the evidence without any reasonable suspicion that a crime has been committed or any cause at all, opened fire on the occupants of the Ford Escort injuring the three Claimants. In this respect the police acted with disregard for the safety of the passengers in the car and as Mr. Adedipe submits probably for their own safety as well.

There is no doubt that the Claimants suffered serious injuries as indicated by the agreed medical certificates. I therefore hold that the acts of the police amount to an assault.

By section 33 of the Constabulary Force Act if the plaintiff fails to prove that the act was done either maliciously or without reasonable or probable cause he shall be non-suited or a verdict given for the defendant. On a balance of probability the Claimants have established that the police acted without reasonable or probable cause and this has not been displaced by the defendant's witnesses.

I appreciate that in **Martin Keene vs. Attorney General (1996) 33 JLR 339** it was held that:

Where there has been a committal by a Magistrate and the Director of Public Prosecution has preferred an indictment

which goes to trial before a jury there can be no want of reasonable and probable cause.

However I have found on the evidence that the Claimants have proven on a balance of probability that the Defendants acted without reasonable or probable cause. Therefore their acts were without legal justification.

It is settled law that where the relationship of employer and employee exists, the employer is liable for the torts of the employee so long as they are committed in the course of the employee's employment. (Clerk & Lindsell page 334)

In Canadian Pacific Railway Co. Vs Lockhart (1942) AC 541 at page 559 Lord

Thinkerton in delivering the judgment of the Privy Council states inter alia:

It is clear that a master is responsible for acts actually authorized by him for liability would exist in this case even if the relationship between the parties was really one of agency and not one of service at all. But a master as opposed to the employer of an independent contractor, is liable for acts which he has not authorized, provided they are so connected with acts which he has authorized, that they may rightly be regarded as modes-although improper mode of doing them.

In other words, a master is responsible not merely for what he authorizes his servant to do, but also for the way in which he does it ---on the other hand, if the unauthorized and wrongful act of the servant is not so connected with the authorized act as to be a mode of doing it, but is an independent act, the master is not responsible; for in such a case the servant is not acting in the course of his employment, but has gone outside of it.

On the evidence in this case I hold that the Attorney General will be vicariously liable for the conduct of the policemen, it servants or agents.

I therefore enter judgment for the Claimants.

Damages

Exemplary Damages

The Claimants' claims have pleaded and are seeking exemplary damages.

This award is usually made in two categories of cases – first; oppressive, arbitrary and unconstitutional actions of servants of the government and secondly cases in which the Defendants' conduct has been calculated by him to make a profit for himself which may well exceed the compensation payable to the Claimant (**Rookes vs Bernard (1964) AC 1124**)

The Claimants have sought to rely upon the oppressive, arbitrary and unconstitutional aspect as pleaded in the claims. On the circumstances of the assault, the unjustifiable action of the police, it is my view that the Claimants should be allowed such an award. These awards are necessary because of the need to punish these officers for their conduct and to deter other like minded officers.

In relation to this award Mr. Adedipe cited the case of **Attorney General vs Muurile Francis SCCA 13/95** delivered on March 26, 1999 \$100,000.00 was awarded as well as **Owen Francis vs Baker Bently and the Attorney General 29 JLR page 424 at page 432 – 43** and **Granville Bowen vs Attorney General Khan Volume 4 page 299** \$250,000.00 awarded in 2001

I am guided by these authorities as well as claim # **CL 2002 A017 Leeman Anderson vs Attorney General & Ors. July 2004** wherein the Claimant claimed he was beaten by a police officer to close his shop without apparent legal authority. He was awarded \$400,000.00.

In this case I would award the sum of \$250,000.00 for each Claimant as recommended by the Claimants' attorney.

The medical reports were agreed

General Damages

Maitland Gregory

This Claimant testified that he was shot in his back as he ran.

The medical report generated by Dr. Randall Collins dated March 21, 2006 states that the Claimant was admitted on August 21, 2004 with a gunshot to the right mid back associated with symptoms and signs of peritonitis.

At surgery he was found to have 3.5 litre of blood in the abdominal cavity, a macerated bleeding right kidney and a severe laceration to the right lobe of his liver.

He had a right nephrectomy repair of the liver and ligation of the right hepatic artery. The duodenal injury was also repaired and a right tube thoracostomy sited. The operation was extensive with massive blood transfusions.

He developed complication associated with his chest tube and was transferred to National Chest Hospital for further management.

March 21, 2006 Dr. Mikael Tulloch-Reid, Senior Medical Officer of the National Chest Hospital indicated that on admission Mr. Gregory's chest X-ray revealed a 40% pneumothorax and a fluid collection in the right hemithorax. He was transfused with cells for an anemia of 6.9.

September 7, 2004 he underwent a right posterolateral thoracotomy. At the time of surgery there was also a haematoma of the lower lobe of the right lung.

He was further managed

No further chest treatment was felt to be required. Chest X-rays suggest elevation of the right hemi-diaphragm, however prognosis for the lung injury is felt to be good.

There is no indication of percentage of disability although the chest X-rays suggested elevation of the right hemi-diaphragm.

Mr. Adedipe placed reliance in this respect on **Williams vs Stephenson Khan Vol 4 page 122**. In this case the Claimant sustained abdominal gunshot injuries and these injuries appeared more serious than that of Mr. Gregory.

An award of \$2.5m was made on November 19, 1996 revalued this would amount to \$10,440,221.31.

The Defendant placed reliance on the cases of **Renford Facey vs Constable Burnett & the Attorney General Khan Vol 5 v page 201 and Grant vs Attorney General Suit No. CL 1988/G071**

In **Renford Facey's** case a 30 year old plaintiff was shot in the back by a police. The injuries included (a) gunshot wound to the back (b) pain in the abdomen and right leg. His impairment 20% of ability to carry on his occupation.

In November 1994 for pain and suffering he was awarded \$2,629,462.60 revalued this would amount to \$15,960,654.10.

In Grant's case the Claimant a Ceramist was shot to the right lower back by a Soldier. October 7, 1994 he was awarded \$350,000.00 revalued this would amount to \$2,139,436.06.

The Defendant recommended an amount of \$2m. The Claimant sought an award of \$6-7m. Taking all these authorities into consideration as well as the injuries suffered by the Claimant, I find that an award of \$4.5m is reasonable in the circumstances.

Kemisha Gregory

Kemisha Gregory testified that she was shot in her buttocks as she ran. Dr. Randall Collins medical report dated October 16, 2008 indicates that examination revealed wounds to the abdomen with features of peritonitis.

On exploratory laparotomy the findings were as follows:

1. Haemoperitonium
2. Multiple perforations in the sigmoid colon
3. Transaction of left ureter

Her sigmoid colon was resected and repaired and the ureter repaired primarily. She responded well to treatment and was discharged on September 9, 2004.

The doctor was unable to comment on the effects that the injuries would have on her reproductive health, but thought that the prognosis as regards full recovery was good.

Mr. Adedipe placed reliance on **Mary Hibbert vs Reginald Parchment Suit # CL 1986 H129**. A 22 years old live-in household helper shot to the abdomen by her employer thinking she was a burglar. She underwent emergency surgery which involved the repair of small bowel and a loop colostomy. Her colostomy was closed on July 15, 1985, however she developed faecal fistula and closure was repeated on November 19, 1988.

In May 1999 she was awarded \$900,000.00 revalued this amounts to \$3,153,815.00.

Reliance was also placed on CL 1999 B119 **Renford Barracks vs Cons. Oral Israel & Ors.** A passenger in a motor vehicle was shot at close range by a police officer on October 3, 1997. He suffered:

- (i) Entry gunshot wound to right upper abdomen
- (ii) Exist gunshot wound to right upper abdomen
- (iii) intra-abdominal injury indicated by generalized tenderness
- (v) lacerations to stomach and small intestine
- (vi) injury to transverse colon

He had transverse loop colostomy which was closed in February 1998 and was fully recovered in April 1998. Barracks was awarded \$1.5m in November 8, 2005 revalued this amounts to \$2,753,515.91.

Mr. Adedipe submitted that the injuries sustained in both cases were more serious than the instant case as in both cases there was a need for a colostomy bag.

The sum of \$2,097,000.00 was recommended by Mr. Adedipe.

The Defendant referred to **Suit CL 1998 C 083 Paul Anthony Collins vs Calbros Security Ltd & Ors Vol 5 Khan 92.** The plaintiff: a security guard 34, shot on December 21, 1996 by armed intruders whilst on duty.

He suffered multiple gunshot wounds to left chest, left axilla and right buttocks. He had surgery. Within two days of surgery it was apparent that his left upper limb was not viable and a left elbow amputation was performed. For pain and

suffering and loss of amenities he was awarded \$2.5m in July 2000. Revalued this amounts to \$7,885,174.42.

The Defendant proposed \$1.5m

Taking into consideration the injuries suffered by the Claimants and the awards made in the cases cited I would award a sum of \$1.95m.

Anthony Gregory

Anthony Gregory testified that he was sitting in the back seat of the car. He was shot in his head by the police whilst he was still in the car. He came out of the car and started to run. He was shot in his leg and he ran and fell to the ground.

The medical report of Anthony Gregory generated by Dr. Randall Collins dated October 16, 2008 states that on admission on August 21, 2004 he was found to have gunshot wounds to the left frontal scalp and left thigh and leg.

Radiological examination revealed a normal skull X-ray with comminuted fracture of the left femur. He was transferred to the Kingston Public Hospital on August 24, 2004 for specialist management of his fractured femur.

Dr. Randall was unable to comment on the prognosis.

The medical certificate from the Kingston Public Hospital dated September 19, 2006 bearing the signature of Dr. Nadine Williams states that on examination there was a splint to the lower limb. Lacerations to frontal aspect of scalp anterior lateral aspect of left thigh just above knee and anterior lateral of left leg just below knee joint.

The diagnosis was open comminuted supra condylar fracture of left femur with intraarticular extension.

On October 19, 2004 he was observed to be doing satisfactory. To return in six months.

In relation to Anthony Gregory's injuries Mr. Adedipe recommended as a guide:

Suit # CL 1998 M 328 Pansy McDermott vs Garnel Lewis and the Attorney General Khan Vol 5 page 287 as well as **Suit # CL 1991 C579 Alfred Cunningham vs maximum Investigations & Ors.**

In McDermott's case the Claimant a higgler, 23 years old attended the police station at the request of the first defendant on May 5, 1993 whilst there she was shot. She sustained the following injuries:

1. 2 punctured wounds 15cm apart on left thigh
2. Gunshot wound to left thigh with soft tissue injury
3. Entry wound to anteriorly in the proximal 1/3 of the left thigh and an exit wound in the middle third of the thigh.

She was awarded \$418,853.00 on April 25, 2002; revalued this amounts to \$1,186,567.89.

In **Alfred Cunningham's** case the plaintiff a 24 year old Security Guard suffered a gunshot wound to the distal 3rd of right leg and an undisplaced diaphyseal fracture of right femur with canister in sita. His PPD was assessed at 2% whole person.

In April 1991 he was awarded \$250,000.00 revalued this would amount to \$5,763,612.21.

The Defendant recommended as a guide the cases of **Pansy McDermott** of **Osbourne Barnes vs Attorney General Suit # CL 1987 B372 Khan Vol 15**

page 73 as also the case of **Clinton Bernard vs Spl. Cons. Morgan and the Attorney General suit # CL 1991 B023** Khan Vol 5 page 182.

In **Osbourne Barnes'** case the plaintiff a mason was shot in a crowded market by the police. His injuries included:

1. gunshot wound to right thigh;
2. 2" linear skin abrasion of right upper thigh exposing white under skin
3. burn marks on surrounding skin;

In February 2000 Reid J awarded \$150,000.00 for general damages re-valued this would amount to \$491,691.84.

In **Clinton Bernard's** case the plaintiff, a 32 years old, Lithographic Printer was shot by the police as he was using a telephone at the Central Sorting Office. His injuries included:

- (a) unconsciousness
- (b) pain
- (c) shot in the head
- (d) inability to walk or use left hand
- (e) epilepsy requiring medication for the rest of his life

The permanent disability of post traumatic epilepsy and his right hemiparesis would moderately impair his ability to earn his living.

He was awarded \$2m in June 2000 revalued this amounts to \$6,369,473.49.

The Defendant recommends as a guide the sum of \$2.5m asserting that the sum awarded in Barnes case was wholly inadequate. The injury suffered by Pansy McDermott was not as severe as those suffered by Anthony Gregory and

Anthony Gregory's injuries were not as severe as those suffered by Clinton Bernard. I must agree with learned counsel for the Defendants in this respect also.

The Claimant had recommended the sum of \$4m.

In assessing the sum to be awarded for general damages I have taken into consideration the cases submitted by counsels on both sides. I have compared the injuries of the Claimants in the cases cited with those suffered by Anthony Gregory and I believe that a sum of \$3.25m is reasonable in all the circumstances.

Order

Judgment for Claimant **Maitland Gregory**:

General Damages in the sum of \$4.5m at 6% interest from the 28th January to 21st June 2006 and therefore at 3% to 28th September 2011.

Exemplary Damages \$250,000.00

Costs to the Claimant to be agreed or taxed

Judgment for Claimant **Kemisha Gregory**:

General Damages in the sum of \$1.95m at 6% interest from the 28th January to 21st June 2006 and therefore at 3% to 28th September 2011.

Exemplary Damages \$250,000.00

Costs to the Claimant to be agreed or taxed

Judgment for Claimant **Anthony Gregory**:

General Damages in the sum of \$3.25m at 6% interest from the 28th January to 21st June 2006 and therefore at 3% to 28th September 2011.

Exemplary Damages \$250,000.00

Costs to the Claimant to be agreed or taxed.